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VIA ECF

March 19, 2020

The Honorable Lorna G. Schofield
Southern District of New York
40 Foley Square
New York, NY 10007

USDC SDNY
DOCUMENT
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Re: *Elizabeth Flint v. Allen/Orchard, LLC, et. al*
Southern District of New York
Docket No. 1:18-cv-09753 (LGS) (HBP)

Dear Hon. Schofield:

We write on behalf of Defendants and request the Court to direct the parties to complete mediation efforts with Daniel Kolb. Both named Defendants and their counsel, along with Plaintiff's counsel (Plaintiff was excused from appearing due to illness) attended a lengthy mediation session this past March 13, 2020 before Hon. Cave. While substantial progress was made, settlement efforts before Hon. Cave were unsuccessful. The Court's arrangements to conduct mediation with Hon. Cave interrupted the prior extensive mediation efforts with Dan Kolb. A copy of Mr. Kolb's correspondence and letter are attached hereto regarding the meetings, discussions and overall extensive efforts which were abruptly ended, and which prevented Mr. Kolb from submitting any mediation memorandum. We ask that the court permit the parties to continue mediation, with the prior mediator, Daniel Kolb. Particularly, we ask that Mr. Kolb be reassigned, to inter alia, schedule a meeting with all the parties, and following said meeting, provide a report to the court regarding the parties settlement status.

Without going into detail so as to prevent revealing specifics of the settlement discussions we have information supporting that plaintiff's counsel has been proceeding in settlement talks in less than a good faith manner. Plaintiff's counsel is handling settlement with just a perfunctory manner.

We ask that the court permit Defendants to produce Rawlings Architects as a fact and expert witness at trial. Mr. Rawlings is Defendants' long standing architect and has already been subpoenaed by Plaintiff in addition to being identified in Defendants' Rule 26 statement. Additionally, we seek to introduce Mr. Salvatore LaBarca as an expert regarding alleged construction costs and to counter plaintiffs cost expert offered to prove Plaintiff's non-architect report.

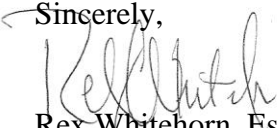
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Plaintiff's counsel has contributed to various and extensive delays in settlement and mediation including providing late responses and an overall unwillingness to compromise. Although not customary, we ask to avoid prejudice to the Defendants that the court in its discretion extend Defendants' time to identify and serve this expert notice.

Sincerely,

Rex Whitehorn, Esq.

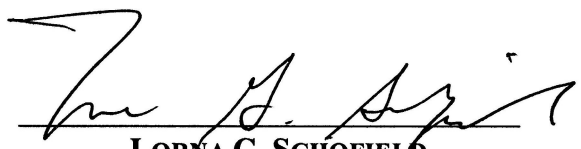
cc: Plaintiff's Counsel via ECF

The parties shall resume their mediation, which must be completed by the final pretrial conference date, as set out below. If necessary, the mediation may be convened remotely, in light of the current public health circumstances.

If Defendants did not notice the above proposed experts during discovery, then it is too late now -- after the close of discovery and on the eve of trial -- for Defendants to introduce new experts. The parties' witnesses will be discussed at the final pretrial conference.

The April 20, 2020, trial is adjourned to **May 25, 2020**. The final pretrial conference will be on **May 18, 2020, at 10:50 a.m.** The final joint pretrial order is due **May 11, 2020**. The Court is already in receipt of the parties' voir dire, request to charge, and jury questions (Dkt. Nos. 62, 64, 65), and notes that neither party filed motions in limine.

Dated: March 20, 2020
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE